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SUPREME COURT, U.S.

No. 71-790

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In the Supreme Court of the United States

OCTOBER TERM, 1971

CLIFTON DEAN PERKINS, PETITIONER

v.

MELVIN R. LAIRD, SECRETARY OF DEFENSE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner, who was drafted into the Army, brought this suit for declaratory and injunctive relief, alleging that the government's involvement in the hostilities in Vietnam is unconstitutional. The district court dismissed the complaint (Pet. App. A-2) and the court of appeals summarily affirmed (Pet. App. A-1). The decision of the court of appeals is plainly correct and does not merit review by this Court.

1. Petitioner asks this Court to declare unconstitutional the United States' participation in combat in Southeast Asia because, he argues, it has not been properly authorized by Congress. The issue raised here

was before this Court recently on the motion by the Commonwealth of Massachusetts for leave to file a complaint in *Massachusetts* v. *Laird*, No. 42 Original, October Term 1970, motion denied, 400 U.S. 886. For the reasons stated in our brief in opposition in that case (No. 42 Original, at pp. 17-42), we submit that the issue is not susceptible of judicial determination or effective judicial relief and presents a nonjusticiable political question. See *Baker* v. *Carr*, 369 U.S. 186; *Powell* v. *McCormack*, 395 U.S. 486; *Georgia* v. *Stanton*, 6 Wall. 50; *Luther* v. *Borden*, 7 How. 1. This Court recently declined to review on certiorari a case presenting the same issues. See *Orlando* v. *Laird*, 443 F. 2d 1039 (C.A. 2), certiorari denied October 12, 1971, No. 71-97.

2. There is no conflict among the circuits concerning challenges to the constitutionality of the United States military operations in Southeast Asia. The lower courts have regularly dismissed actions based on the identical contention made here on grounds that the issue raised is a non-justiciable political question,[1] or that the suit was an unconsented suit against the United States,[2] or that

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[1] See, *e.g.*, *Orlando* v. *Laird*, 443 F. 2d 1039 (C.A. 2), certiorari denied October 12, 1971, No. 71-97; *Massachusetts* v. *Laird*, 4 S.S.L.R. 3604 (C.A. 1); *Da Costa* v. *Laird*, 4 S.S.L.R. 3565 (C.A. 2), petition for certiorari pending, No. 71-833; *Luftig* v. *McNamara*, 252 F. Supp. 819 (D. D.C.), affirmed, 373 F. 2d 664 (C.A. D.C.), certiorari denied, 387 U.S. 945; *Mora* v. *McNamara*, 387 F. 2d 862 (C.A. D.C.), certiorari denied, 389 U.S. 934; *Velvel* v. *Johnson*, 287 F. Supp. 846 (D. Kan.), affirmed, *sub nom. Velvel* v. *Nixon*, 415 F. 2d 236 (C.A. 10), certiorari denied, 396 U.S. 1042; *Davi* v. *Laird*, 318 F. Supp. 478 (W.D. Va.); cf. *United States* v. *Holmes*, 387 F. 2d 781 (C.A. 7), certiorari denied, 391 U.S. 936.

[2] See, *e.g.*, *Luftig* v. *McNamara*, *supra*, n. 1; *Velvel* v. *Johnson*, *supra*, n. 1.

the plaintiff was without standing to bring the suit.[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1972.

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[3] See, *e.g.*, *Ashton* v. *United States*, 404 F. 2d 95 (C.A. 8), certiorari denied, 394 U.S. 960; *Kalish* v. *United States*, 411 F. 2d 606 (C.A. 9), certiorari denied, 396 U.S. 835; *Velvel* v. *Johnson*, *supra*, n. 1; and see *United States* v. *Bolton*, 192 F. 2d 805 (C.A. 2) (Korean War).

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